87-1473

Supreme Court, U.S.
FILED
OCT 9 1987
JOSEPH F. SPANIOL, JR.
CLERK

No.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1987

DUANE HANSON,
Petitioner

v.

TRINIDAD CORPORATION

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

SIMON W. TACHE
Counsel of Record

The Windsor, 2nd Floor
1700 Parkway
Philadelphia, PA 19103
(215) 567-4700

QUESTIONS PRESENTED

1. Did the United States Court of Appeals for the Third Circuit err when it ruled that a sailor's maintenance and cure claims, bifurcated from the Jones Act claim and reserved for bench trial but never decided on the merits, were barred by operation of Local Rule 20(e) of the Eastern District of Pennsylvania; and were final and appealable when neither the jury verdict nor the judgment entered considered the rights and liabilities of the parties as to the maintenance and cure claims?

2. Whether the prospective application of Local Rule 20(e) of the Eastern District of Pennsylvania local rules to deny plaintiff's motion for summary judgment as to his maintenance and cure claims reserved for bench trial but never decided on the merits resulted in an unwarranted invasion of his right to a jury trial and an impermissible derogation of his substantive claims?

TABLE OF CONTENTS

DECISIONS BELOW.....2

JURISDICTION.....2

STATUTORY PROVISIONS INVOLVED.....2

STATEMENT.....3

REASONS FOR GRANTING THE PETITION.....7

CONCLUSION.....27

APPENDIX A.....27a

APPENDIX B.....27c

TABLE OF AUTHORITIES

Cases:	Page
Albatross Shipping Corp. v. Stewart, 326 F.2d 208, 210 (5th Cir. 1964)	16
Aparicio v. Swan Lake, 643 F.2d 1109, 1113, nt. 6 (5th Cir. 1981)	16
Crews v. Arundel Corp., 386 F.2d 528, 529, 530 (5th Cir. 1967)	18
Eisen v. Carlisle and Jacquelyn, 417 U.S. 156 (1974)	21
Fitzgerald v. U.S. Lines Co., 374 U.S. 16, 21, 83 S.Ct. 1646 (1963)	24,26
Haskins v. Point Towing Co., 395 F.2d 737, 740, 741, 743 (3rd Cir. 1968)	25
Kushner v. Winterthur Swiss Insurance Company, 620 F.2d 404 (3rd Cir. 1980)	11,22,23
Longbottom v. American Dredging Co., 159 F.Supp. 296, 297 (D.Ct. E.D. Pa. 1958)	19
Nichols v. Barwick, et al., 792 F.2d 1520, 1522, 1523 (11th Cir. 1986)	10,14,15
Norris v. Board of Fire and Police Commissioners of Village of Oak Park, 332 N.E. 2nd 553 (1st Dist. 1975)	13
O'Donnell v. Latham, 525 F.2d 650 (5th Cir. 1976)	15

Cases: Page

Pelotto v. L & N Towing Co., 604 F.2d 396, 400 (5th Cir. 1979) 10

Save the Bay, Inc. v. United States Army, 639 F.2d 1100, 1102 (5th Cir. 1981) 14

The Arizona v. Anelich, 298 U.S. 110 (1936) 7,8,9,11

Treasure Salvors, Inc. v. Unidentified Wrecked & Abandoned Sailing Vessel, 640 F.2d 560, 564 (5th Cir. 1981) 15

Warren v. United States, 340 U.S. 523 (1951) 9,11

Statutes:

28 U.S.C. §1291 13

28 U.S.C. §1292(a)(3) 14,15,16,22

28 U.S.C. §1254(1) 2

46 U.S.C. §688 10

Rules:

Local Rule 20(e) 11,12,18,19,20, 21,23

FRCP 54(b) 14,16,17,22

FRCP 58 17,22

Rules: Page

FRCP 59 13

FRCP 60 13

FRCP 8 22,23

Rules 10(3)(1) and 30(1)(1) of the Federal Rules of Appellate Procedure 11,22

Miscellaneous:

9 Moore's Federal Practice, paragraph 110.19 [3], at 210-211 (2nd ed. 1980) 16

IN THE

SUPREME COURT OF THE UNITED STATES

DUANE HANSON,
Petitioner

v.

TRINIDAD CORPORATION

PETITION FOR A WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

Simon W. Tache, P.C., Esquire, on behalf of Duane Hanson, petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Third Circuit in this case.

DECISIONS BELOW

The judgment order of the Court of Appeals for the Third Circuit (Appendix A) summarily affirming the decision of the District Court and denying petitioner's motion for a hearing en banc (Appendix B) is unreported.

JURISDICTION

The judgment of the court of appeals was entered on June 25, 1987. A motion for rehearing en banc was denied on July 21, 1987. The Jurisdiction of this Court is involved under 28 U.S.C. 1254(1).

STATUTORY PROVISIONS INVOLVED

Local Rule 20(e) of the Eastern District of Pennsylvania Local Rules states:

> Within ten (10) days after filing any post-trial motion, the movant shall either (a) order a transcript of the trial by writing delivered to the Court Reporter Coordinator, or (b) file a verified motion showing good cause to be excused from this requirement. Unless a transcript is thus ordered, or the movant excused from obtaining a transcript, the post-trial motion must be dismissed for lack of prosecution.

STATEMENT

1. Petitioner, Duane Hanson, is a seaman and a member of the United States Merchant Marines.

2. On November 1, 1984, Petitioner joined the SS "Glacier Bay" as a wiper. On November 26, 1984, the Petitioner was in the course of performing his duties pursuant to orders. On the date in question, the evaporator was malfunctioning. To effectuate repairs on the malfunctioning evaporator, the

Petitioner was ordered to assist the First Assistant Engineer. A chainfall was being used to lift a section of the pipe to be connected to the evaporator.

3. A piece of metal sheet at least one foot square and constructed by the First Assistant Engineer was used as chafing plate. The piece of metal sheet was used to insulate and protect the pipe from chafing by the chainfall. The chafing plate was installed twelve feet above the working crew. The Petitioner was standing twelve feet below the chafing plate. A lanyard was not attached to the chafing plate when it was so installed. The Petitioner was not provided with head gear during this repair job.

4. The chafing plate fell and struck the Petitioner on his head. The First Assistant Engineer was supervising the

operation and the vessel was heavy seas. The Petitioner was injured as a result of this accident. Petitioner sustained injuries to his tooth, head and neck. The Petitioner was not responsible for the control of the repair operation.

5. The officers were responsible for the supervision, management and control of this repair operation.

6. On November 29, 1984, Petitioner was sent to Dr. Thomas P. Brooks by the Defendants. Petitioner complained of dizziness, headaches, numbness to the left side of his head and was disoriented.

7. Petitioner was seen by various doctors, including Drs. Brooks, Goldston, Rindal, and Chamblin from November 29, 1984 through April 28, 1986.

8. Petitioner is presently still under the care of physicians.

9. A jury trial was held on September 15, 1986, on the Jones Act claims of negligence while the maintenance and cure claims were reserved by the judge for bench trial.

10. At the close of the trial, the jury entered a verdict in favor of the Petitioner after less than one-half hour of deliberation in the amount of $3,500.

11. On September 19, 1986, the judge entered a judgment in accordance with the jury verdict and the appellant filed a motion for new trial on September 26, 1986 based on the jury's inadequate verdict and trial irregularities.

12. On October 27, 1986, the judge dismissed appellant's motion for a new trial and an appeal was timely taken by the appellant to the Third Circuit.

13. On June 25, 1987, the Third Circuit in a Memorandum Opinion affirmed the decision of the District Court denying Petitioner's petition for a new trial and denying Petitioner's motion for summary judgment as to Petitioner's claims for maintenance and cure benefits. The Third Circuit further declined Mr. Hanson's request for a rehearing en banc.

REASONS FOR GRANTING THE PETITION

1. The decision of the Third Circuit is inconsistent with the national maritime policy of protecting sailors.

This case presents an issue of great national importance and, in particular, of great concern to the American sailor. This Court has long held that sailors are "wards of admiralty". The Arizona v. Anelich, 298 U.S. 110, (1936). Ever since the decision

in The Arizona, it has been a matter of national policy and of American jurisprudence to treat sailors as a protected class. By its very nature, the dynamic status of the profession of the sailor commands judicial and legislative protection. The primary rationale for this protective policy is based on the indispensable role sailors play to the national defense. Our sailors provide the unique service as the lifeline of our national communication with the rest of the shipping world. This role places our sailors the responsibility of projecting the national colors across the oceans. Indeed, this Court left no doubt in its duty to uphold the policy of protecting the welfare of sailors when it held that whenever possible, courts of the land

should construe any ambiguities either in law or in fact in favor of the seaman. Cf. Warren v. United States, 340 U.S. 523 (1951) (holding that ambiguities involving maintenance and cure benefits be construed in favor of the ill or injured seaman.)

In the case at bar, the District Court bifurcated from the Jones Act claim, Petitioner's maintenance and cure claims, and reserved them for bench trial. In view of the bifurcation, the Petitioner did not testify regarding the maintenance and cure claims and his testimony was limited solely to the negligence claims. In denying the Petitioner's motion for maintenance and cure, the Third Circuit failed to adhere to the policy established in The Arizona and Warren.

2. The jury verdict did not and cannot affect Petitioner's maintenance and cure claims.

Generally, a seaman's claim under the Jones Act (46 U.S.C. §688) is separate and distinct from a claim for "maintenance and cure", implicit in the contractual relationship between the seaman and the employer. Maintenance and cure benefits are designed to provide food and lodging to the seaman for injury or sickness sustained in the service of the ship. Maintenance and cure are due without regard to the "negligence" of the employer or the "unseaworthiness" of the ship. Pelotto v. L&N Towing Co., 604 F.2d 396, 400 (5th Cir. 1979); Nichols v. Barwick, et al., 792 F.2d 1520, 1523 (11th Cir. 1986). Therefore, the jury verdict did not and cannot modify or affect Petitioner's maintenance and cure claims.

3. Local Rule 20(e) is inapplicable to the facts of this case.

On June 25, 1987, the Third Circuit upheld the District Court's dismissal of Petitioner's appeal on the authority of Kushner v. Winterthur Swiss Insurance Company, 620 F.2d 404 (3rd Cir. 1980) (page 3, Memorandum Opinion of the Court). In order to reach that decision, the Third Circuit had to elevate and then equate Local Rule 20(e) of the United States District Court for the Eastern District of Pennsylvania to Rules 10(3)(1) and 30(a)(1) of the Federal Rules of Appellate Procedure. Id. This interpretation of Kushner clashes with the policy enunciated in The Arizona and Warren.

Were the Third Circuit's decision limited to the District Court's dimissal of Petitioner's motion for new trial, the

Petitioner would have reluctantly accepted the ruling notwithstanding the result. However, the memorandum opinion of the Third Circuit also invokes Local Rule 20(e) as ground for the dismissal of Petitioner's appeal as to his motion for maintenance and cure benefits. The resulting formula as fashioned by the Third Circuit in its application of Local Rule 20(e) to the facts of the case at bar manifests certain fundamental factual and legal deficiencies inconsistent with existing controlling precedent.

In dismissing Petitioner's appeal as to his motion for maintenance and cure benefits based on Local Rule 20(e), the Third Circuit necessarily assumed that Petitioner's motion for maintenance and cure benefits is a post-trial motion. The opinion of the Third Circuit neither

defines a post-trial motion nor explains the equation of Petitioner's motion for maintenance and cure benefits to a post-trial motion or a final judgment.

A post-trial motion is a generic term that describes a motion which is permitted after trial, such as a motion for new trial under Federal Rules of Civil Procedure 59 or for relief from judgment under Rule 60. In effect, a post-trial motion is one directed against a judgment or an issue fully litigated and final. See, Norris v. Board of Fire and Police Commissioners of Village of Oak Park, 332 N.E. 2nd 553 (1st Dist. 1975).

4. The decision is inconsistent with Federal Rules of Civil Procedure and decisions of the Fifth Circuit.

In general, judgments may be appealed under 28 U.S.C. §1291 when a "final order"

is promulgated by the court. A "final order" determines the rights and liabilities of the parties. To be appealable, an order must either be final or fall into a specific class of interlocutory orders which are made appealable by statute or jurisprudential exception. Save the Bay, Inc. v. United States Army, 639 F.2d 1100, 1102 (5th Cir. 1981). Appeals may be made under 28 U.S.C. §1292(a)(3) from interlocutory decrees of District Court determinations of the rights and liabilities of the parties to admiralty cases in which appeals from "final" decrees are allowed.. Nichols, 792 F.2d at 1522.

Under Federal Rules of Civil Procedure 54(b), absent an order from the court, no decision is final, unless it adjudicates all claims among the parties. However, not

all of the rights and liabilities of all the parties need be determined before §1292(a)(3) appeals are granted. Nichols, id.; O'Donnell v. Latham, 525 F.2d 650 (5th Cir. 1976).

28 U.S.C. §1292(a)(3) is designed to apply in admiralty where it is not uncommon for the court to enter an order "finally" determining the issues of liability and then to refer the case to a "master" for a determination of damages. Courts tend to construe this section narrowly, permitting interlocutory appeals only where the order has the effect of "ultimately determining the rights and obligations of the parties." Treasure Salvors, Inc. v. Unidentified Wrecked & Abandoned Sailing Vessel, 640 F.2d 560, 564 (5th Cir. 1981).

Whenever an order dismisses a claim for relief on the merits it is appealable

under §1292(a)(3), although other separate claims for relief have not been dismissed. Aparicio v. Swan Lake, 643 F.2d 1109, 1113, nt. 6 (5th Cir. 1981); citing 9 Moore's Federal Practice paragraph 110.19 [3], at 210-211 (2nd ed. 1980). In contrast, a partial summary judgment awarding damages for failure to pay maintenance and cure was held not appealable under §1292(a)(3) where a personal injury claim against the defendant was still pending. Albatross Shipping Corp. v. Stewart, 326 F.2d 208 (5th Cir. 1964). An order of a federal District Court is "final" for appeal purposes, only when the order terminates the litigation, leaving nothing to be done but to enforce the judgment. Albatross, 326 F.2d at 210.

Under Federal Rules of Civil Procedure 54(b), when more than one claim for relief

is presented, the court may direct the entry of a final judgment as to fewer than all of the claims only upon:

(a) an express determination that there is no just reason for delay; and

(b) upon an express direction for the entry of judgment (see, FRCP 58).

Absent such determination and direction, any order or other form of decision adjudicating fewer than all the claims shall not terminate the action as to any of the claims. Such an order or decision is subject to revision at any time before the entry of judgment as to all the claims and rights and liabilities of all the parties. FRCP 54(b).

In the case at bar, the trial court reserved for decision the issues of

maintenance and cure. These issues could have been decided either by motion or by bench trial. The Petitioner initiated the process by filing a motion for summary judgment with appropriate affidavits and documentation. The District Court failed to rule on Petitioner's motion. No decision of any type was rendered by the Court on these claims. Neither the jury verdict nor the judgment entered by the District Court included maintenance and cure claims. Therefore, Petitioner's motion for maintenance and cure benefits was neither a post-trial motion within the meaning of Local Rule 20(e) nor was the dismissal of that motion a final judgment.

But, cf, Crews v. Arundel, 386 F.2d 528 (5th Cir. 1967) (the jury verdict on the negligence claims was a "final judgment" since the verdict constituted a final

adjudication of plaintiff's negligence claim, determining the rights and liabilities of the parties.)

The District Court had originally reserved for bench trial the maintenance and cure claims, but never issued a judgment. Thereafter, Petitioner filed a motion for summary judgment on his maintenance and cure claims. The District Court in admiralty has jurisdiction to grant summary judgment where no genuine issue of material fact is presented. Longbottom v. American Dredging Co., 159 F.Supp. 296, 297 (D. Ct. E.D. Pa. 1958).

Instead of ruling on the Petitioner's motion, the court dismissed the motion for "lack of prosecution" under Local Rule 20(e). A "post-trial motion" may be

defined as a motion after a "final judgment". Therefore, Local Rule 20(e) is not applicable to the maintenance and cure claims of the Petitioner under these facts.

A denial or dismissal of a motion for summary judgment is not a "final judgment" since there has been no determination of the rights and liabilities of the parties. In addition, the court never issued a decision on the maintenance and cure claims. Hence, there was no "final judgment" on the maintenance and cure claim to invoke Local Rule 20(e). This conclusion is butressed by the fact that a denial of summary judgment presupposes the existence of genuine issues of material fact to be determined. Furthermore, the court never issued a decision on the merits of the maintenance and cure claims. As such, it was not proper for the court to

dismiss the maintenance and cure claim for lack of prosecution under the authority of Local Rule 20(e).

Indeed, even if the Petitioner had ordered the trial transcript as required by Local Rule 20(e), the transcript would have served no purpose since Petitioner's testimony was limited to the Jones Act claim. Until the maintenance and cure benefits issues were decided on the merits, the District Court's entry of judgment on the Jones Act claim was not a final decision. The unfortunate result reached by the Third Circuit is in part due to Petitioner's concern that an appeal on both the judgment and the maintenance benefits issues would avoid the debilitating effects of piecemeal review. See, Eisen v. Carlisle and Jacquelyn, 417 U.S. 156 (1974). Yet, Petitioner could not appeal

the maintenance and cure claims until a final determination of the rights of parties was made.

Therefore, the decision of the Third Circuit in the case at bar is inconsistent with decisions of the 5th Circuit. Cf, Kushner, Federal Rules of Civil Procedure 54(b), 83, 58 and 28 U.S.C. 1292(a)(3).

5. The decision's reliance on Kushner creates confusion and inconsistency within the Circuit.

The application of the Kushner to the facts of this case is deficient in several respects. Kushner addressed and construed FRAP 10(3)(1) and 30(a)(1). The facts compelling the decision in Kushner are clearly distinguishable from the facts of this case. In fact, there is ample justification from the record for the confusion generated in the case at bar

which was not present in Kushner.

The purpose of Kushner, as applied to the facts of that case, is to facilitate the orderly and efficient functioning of the appellate procedure in the Third Circuit. Now, the Third Circuit has by this decision expanded that purpose to cover trial procedures in the lower courts and redefined post-trial motions to include issues not ruled upon by the lower court. Such a ruling creates confusion and inconsistency with Federal Rules. See, FRCP 83.

Any construction of Local Rule 20(e) does not justify its application to the maintenance and cure benefits component of the case at bar. Indeed, to apply Kushner to the facts of this case would convert Local Rule 20(e) from a procedural to a

substantive rule which operates to deprive Petitioner of a substantive right granted him by the Congress of the United States. Petitioner's claim for maintenance and cure benefits is substantive and may not arbitarily be taken away by a local rule.

6. The decision creates an unwarranted invasion of sailors right to a jury trial and untimely derogation of sailors rights.

Another anormaly of the Third Circuit decision is that it unnecessarily invades Petitioner's right to a jury trial on all issues of his claim. The Court held in Fitzgerald v. U.S. Lines, 374 U.S. 16, 83 S.Ct. 1646 (1963), that a seaman's maintenance and cure claim joined with a Jones Act claim must be submitted to the jury when both arise out of one set of facts. Ordinarily actions for maintenance

and cure do not require trial by jury. But, the Jones Act requires a trial by jury of the negligence aspect of the case. Therefore, since all aspects of the claim should be submitted to one trier of fact, the jury is the only tribunal competent under the present congressional enactments to try all the claims. Fitzgerald, 374 U.S. at 21.

As such, a maintenance and cure claim joined with a Jones Act claim must be submitted to the jury when both arise out of one set of facts. Fitzgerald, id. Petitioner's case was, however, bifurcated by agreement of the parties.

In accord with Fitzgerald, Haskins v. Point Towing Co., 395 F.2d 737 (3rd Cir. 1968), is the leading case on this point in the Third Circuit. The Haskin court

held that a plaintiff who files a complaint under the Jones Act and demands a jury trial, has a right to join with it and have tried before a jury his claims under maritime law. Haskin, 395 F.2d at 740. Requiring plaintiff's claims for negligence and for maintenance and cure to be heard in admiralty without right to jury was error. Haskin, 395 F.2d at 741. By analogy, the bifurcation of Petitioner's claims and failure to hear the maintenance and cure portion on the merits has the affect of denying Petitioner's right to a jury trial. This result is inconsistent with Fitzgerald and Haskin.

CONCLUSION

The Petition for a Writ of Certiorari should be granted.

Respectfully submitted,

SIMON W. TACHE, P.C.

By: _____
SIMON W. TACHE

APPENDICES

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

Nos. 86-1711 and 86-1742

DUANE HANSON,

Appellant

vs.

TRINIDAD CORPORATION,

Appellee

SUR PETITION FOR REHEARING

Present: GIBBONS, Chief Judge, SEITZ, WEIS, HIGGINBOTHAM, SLOVITER, BECKER, MANSMANN, GREENBERG, Circuit Judges, and BISSELL, District Judge.*

The petition for rehearing filed by appellant in the above entitled case having been submitted to the judges who participated in the decision of this court and to all other available circuit judges of the circuit in regular active service, and no judge who concurred in the decision

having asked for rehearing, and a majority of the circuit judges of the circuit in regular active service not having voted for rehearing by the court in banc, the petition for rehearing is denied.

BY THE COURT,

_____
Circuit Judge

* Honorable John W. Bissell of the United States District Court for the District of New Jersey, sitting by designation.

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

Nos. 86-1711 and 86-1742

HANSON, DUANE,

Appellant in No. 86-1711

vs.

TRINIDAD CORPORATION,

HANSON, DUANE,

vs.

TRINIDAD CORPORATION

Appellant in No. 86-1724

Appeal from the United States District Court for the Eastern District of Pennsylvania
(D.C. Civil No. 85-1599)
District Judge: Honorable Charles R. Weiner

Submitted Under Third Circuit Rule 12(6)
June 19, 1987
Before: SEITZ and MANSMANN, Circuit Judges, and BISSELL, District Judge.

(Filed June 25, 1987)

MEMORANDUM OPINION OF THE COURT

MANSMANN, Circuit Judge.

Appellant Duane Hanson, a merchant seaman, appeals from the denial of his motion for a new trial and from the dismissal of his motion for summary judgment in regard to maintenance and cure benefits. For the reasons stated below, we will affirm the judgment of the district court.

I.

In November, 1984 the appellant was serving aboard the SS Glacier Bay as a wiper. During the course of his duties, a piece of metal called a chafing plate fell and struck him on the head. Mr. Hanson consulted a number of physicians, complaining of headaches and dizziness, and was treated for those symptoms. He was eventually able to return to work, but then sought additional medical attention for neck pain. Although one chiropractor opined that the appellant's pain was caused

by fractured vertebrae, this testimony was directly rebutted by other treating physicians. Mr. Hanson was consistently found to be neurologically intact.

After a jury trial, the appellant was awarded $3,500 in damages. He then filed a motion for a new trial pursuant to Fed. R. Civ. P. 59. This motion was dismissed for lack of prosecution, in compliance with local rules. Mr. Hanson also filed a motion for summary judgment for maintenance and cure benefits, which was similarly dismissed for lack of prosecution in accordance with local rules. Mr. Hanson then timely appealed to this court. The defendant in the district court, Trinidad Corporation, cross-appealed requesting only that if a new trial were awarded, the new trial cover the issue of liability as well as damages.

II.

Our review of the district court's action in imposing sanctions for failure to comply with a local rule is whether the district court abused its discretion. See, National Hockey League v. Metro Hockey Club, 427 U.S. 639 (1976).

The Federal Rules of Civil Procedure expressly permit the district court to make and amend rules governing its practice, providing that such rules are not inconsistent with the federal rules. Fed. R. Civ. P. 83. Rule 20(e) of the Local Rules of the United States District Court for the Eastern District of Pennsylvania provides:

> Within ten (10) days after filing any post-trial motion, the movant shall either (a) order a transcript of the trial by a writing delivered to the Court Reporter Coordinator, or (b) file a verified motion showing good cause to be excused from this requirement. Unless a transcript

> is thus ordered, or the movant excused from obtaining a transcript, the post-trial motion must be dismissed for lack of prosecution.

In this case, appellant Hanson neither ordered such a transcript nor filed motion showing good cause to be excused from that requirement. Accordingly, the district court denied the motion for a new trial.

We find no abuse of discretion in the trial court's action. While dismissal of a motion is a harsh sanction, failure to proceed with the local rules unnecessarily burdens the court and impedes the orderly and efficient functioning of the judicial process. See Kushner v. Winterthur Swiss Insurance Co., 620 F.2d 404 (3d Cir. 1980). We therefore find that it was within the court's discretion to dismiss the motion for a new trial.

The district court denied as well the motion for maintenance and cure benefits. In regard to this motion, we note that the district court allowed appellant Hanson an additional 50 days to comply with Local Rule 20(e). However, Hanson failed to proceed even within this additional grant of time. We cannot, therefore, find an abuse of discretion in the court's dismissal of this motion.

We therefore affirm the district court's dismissal of both the motion for new trial and the motion for summary judgment by appellant Hanson. Accordingly, the request by Trinidad Corporation for a new trial is rendered moot.

TO THE CLERK:

Please file the foregoing opinion.

Circuit Judge

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

DUANE HANSON Appellant,	:	Civil Action
vs.	:	
TRINIDAD CORPORATION, Appellee.	:	Nos. 86-1711 and 86-1724

AFFIDAVIT OF SERVICE

I, Simon W. Tache, hereby certify that on October , 1987, copies of the within petition for cert were served upon the following by hand delivery:

40 copies - U.S. Supreme Court
One First Street, N.E.
Washington, D.C. 20543

3 copies - U.S. Court of Appeals for
the Third Circuit
21400 U.S. Courthouse
601 Market Street
Philadelphia, PA 19106

3 copies - E. Alfred Smith, Esquire
Krusen Evans and Byrne
500 Public Ledger Building
Independence Square
Sixth and Chestnut Sts.
Philadelphia, PA 19106-3473

SIMON W. TACHE, P.C.

By: Simon Tache
SIMON W. TACHE, ESQUIRE
Attorney for ~~Appellant~~